

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Carl Alexander Cohen

v.

Case No. 20-cv-943-PB
Opinion No. 2021 DNH 033

Boston Scientific Corporation

ORDER

Boston Scientific Corporation has moved to dismiss Carl Alexander Cohen's breach of warranty claim because Cohen failed to give it timely notice of the claim in violation of [N.H. Rev. Stat. Ann. § 382-A:2-607\(3\)](#). That provision, by its plain terms, applies only to someone who is a "buyer." Here, it is undisputed that Cohen is not a buyer. Although the official comments to this section can be read to suggest that any litigant who may wish to assert a breach of warranty claim must give notice of his claim to any seller, such comments are not part of the statute and cannot be relied on to change the meaning of unambiguous statutory text. Accordingly, I agree with those courts that have concluded that the notice requirement does not apply to someone who is not a buyer. [See, e.g., Cole v. Keller Indus., Inc.](#), 132 F.3d 1044, 1047-48 (4th Cir. 1998); [McKnelly v. Sperry Corp.](#), 642 F.2d 1101, 1107 (8th Cir. 1981). Boston Scientific's motion to dismiss (Doc. No. 16) is denied.

SO ORDERED.

/s/ Paul J. Barbadoro
Paul J. Barbadoro
United States District Judge

February 5, 2021

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